

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Team # 1	CCRB Case #: 201208698	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/06/2012 9:45 PM	Location of Incident: Outside Nostrand Playground	Precinct: 67	18 Mo. SOL 1/6/2014	EO SOL 1/6/2014	
Date/Time CV Reported Fri, 07/06/2012 10:11 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 07/06/2012 10:11 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Sears	05952	949650	PBBS
2. POM Anthony Diluca	00179	948893	PBBS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ralph Giordano	31691	949031	PBBS
2. POM Timothy Reilly	05913	949535	PBBS
3. POM Joseph Santangelo	00271	949618	PBBS

Officer(s)	Allegation	Investigator Recommendation
A.POM John Sears	Abuse: PO John Sears questioned § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

## Case Summary

§ 87(2)(b) filed this complaint via the CCRB call processing system on July 6, 2012 (encl. B 1).

On July 6, 2012, at approximately 9:45pm, § 87(2)(b) was standing outside the entrance to the Nostrand Playground, which is a park on Nostrand Avenue and Foster Avenue, in Brooklyn. He was approached by PO John Sears and PO Anthony Diluca both assigned to Patrol Borough Brooklyn South, who were driving a marked police van. During the interaction between the officers and § 87(2)(b) the following misconduct is alleged to have occurred:

- **Allegation A – Abuse of Authority: PO John Sears questioned** § 87(2)(b)

§ 87(2)(g)

- § 87(4-b), § 87(2)(g)

On September 10, 2012, after PO Sears was identified by the investigation, § 87(2)(b) was called and offered mediation as a means of resolving his complaint, and he accepted. However, as the identity of the subject officer was unclear until after the officers were interviewed, the mediation unit determined that case could not be resolved through mediation.

## Results of Investigation

### Civilian Statement(s)

**Complainant/Victim:** § 87(2)(b)

- § 87(2)(b)

### CCRB Statement:

On July 20, 2012, § 87(2)(b) provided a phone statement to the CCRB (encl. B 2), and, on August 13, 2012, he was interviewed at the CCRB (encl. B 3-7). § 87(2)(g)

On July 6, 2012, at around 9:00 p.m. in the evening, § 87(2)(b) was in a park on Nostrand Avenue and Foster Avenue in Brooklyn. He had been in the park for most of that day, and had not seen any police in the area. By the late evening, the park was full of people as it was a very hot night, and there was a youth basketball tournament going on. This park closes usually at around 10:00 p.m.; the sign on the front says it closes at dusk.

§ 87(2)(b) was wearing black and white sneakers, blue jeans, and a blue t-shirt. He had his wallet in his left front pocket, and his cell phone was in his right front pocket with his keys.

Just after 9:00 p.m., § 87(2)(b) left the park to go to visit a friend nearby. When he returned, between 9:15 p.m. and 9:25 p.m., § 87(2)(b) observed a marked police van inside the park. Several officers were inside the van, and they were driving slowly around the park. § 87(2)(b) was standing at the main entrance to the park on Foster Avenue between Nostrand Avenue and New York Avenue, but not inside the park itself. He was looking for his § 87(2)(b)-year-old son that he had been there with. The entrance is roughly twelve feet wide, and is in the middle of the block. It is the entrance used for parks vehicles. As § 87(2)(b) was looking for his son, he asked several people on the sidewalk if they had seen him. As he was talking with a man from the neighborhood named § 87(2)(b) with his back to the park, the van drove up behind him from inside the park. § 87(2)(b) noticed the lights and turned around.

The van stopped at the entrance to the park, and three uniformed officers got out: PO John Sears, of Patrol Borough Brooklyn South, who was identified by this investigation and was described as a white male, in uniform, 5'6" tall, slender build, with blond hair, in his mid 20's to early 30's; PO Anthony Diluca, of Patrol Borough Brooklyn South, who was identified by this investigation and was described as a white male, in uniform, 5'5"-5'6" tall, heavy set, with blond hair, and in his mid 20's to early 30's; and PO1, who remains unidentified and was described as a white male, in uniform, 6'1"-6'2" tall, slender build, in his mid 20's to early 30's. In his phone statement, § 87(2)(b) stated that there might have been a fourth officer. PO Sears, who had been the driver of the van, approached § 87(2)(b). PO Diluca and PO1 walked out in front of the van, and stood there. PO Sears said to § 87(2)(b) "What, you didn't see us?" § 87(2)(b) replied, "No, I wasn't paying attention, I was looking for my son." Then PO Sears asked for his identification, and § 87(2)(b) gave it to him and started laughing. § 87(2)(b) said, "What do you want my ID for?" and PO Sears replied, "Just give me your ID," and then went into the van with his ID. At this point, § 87(2)(b) called 311 to make a complaint, and was connected to the CCRB call processing system.

PO Diluca and PO1 remained out in front of the van standing in the entrance to the park, several feet away from § 87(2)(b) who was standing on the sidewalk, in front of the entrance to the park. They were talking with each other, and then PO Diluca pointed to § 87(2)(b) and said, "Because of this idiot, everybody's got to get out of the park." § 87(2)(b) responded, "Please don't call me not by my name, I'm not your father." The officers then went back to talking between themselves. At this point, § 87(2)(b)'s son walked up to him from inside the park, and asked what was wrong. § 87(2)(b) told him not to worry. § 87(2)(b) did not see where his son was before he approached him.

PO Sears came back and gave § 87(2)(b) his identification. Although § 87(2)(b) is not sure, he vaguely remembers PO Sears saying something to the effect of: everyone needed to get out of the park because of § 87(2)(b). After that, the officers got back in the van and left. Although many people had left the park when the police arrived, there were still a lot of people in the park. § 87(2)(b) never went back into the park, but he and his son remained in the area for around 25 minutes. The interaction between § 87(2)(b) and the officers lasted around eight minutes.

### **Attempts to contact civilians**

In his CCRB interview, § 87(2)(b) was unable to provide contact information or the full name of § 87(2)(b) who was the only person he could name as being with him when he was approached by the police. § 87(2)(b) was called again on September 10, 2012, to see if he could provide contact information for the individual, and he stated that he could not, but that he would try to locate the information and call back. He was also asked again if he could identify anyone else that was in the area who would have witnessed the incident, and he stated that he did remember several people, but could not recall their names or any contact information. As of June 26, 2013, § 87(2)(b) has not called the CCRB with this information.

### **NYPD Statement(s):**

#### **Subject Officer: PO JOHN SEARS**

- *PO Sears is a white male, 5'10", 170 lbs, with black hair and brown eyes. At the time of the incident, he was § 87(2)(b) old.*
- *On July 6, 2012, PO Sears worked from 7:30pm to 4:05am the following day. He was assigned to IRT Auto in the 67<sup>th</sup> Precinct, which entails patrolling the Impact Zone. At that time, the Impact Zone was the area bound by Church Street in the North, Foster Avenue in the South, Nostrand Avenue in the East, and New York Avenue in the West. He was working with PO Diluca, and was assigned to the IRT van, which is a marked twelve-seater police van.*

#### **Memo Book:**

PO Sears had the following entries in his memo book regarding the incident: At 9:45 pm, one male was stopped at the corner of Nostrand Avenue and Foster Avenue. His information is given as: § 87(2)(b) § 87(2)(b), § 87(2)(b). A Stop, Question, and Frisk report was prepared for Robbery (encl. C 1-2).

#### **Handwritten Stop, Question, and Frisk Report for § 87(2)(b)**

PO Sears filled out the Stop, Question, and Frisk report related to this incident on July 6, 2012. The stop occurred at 9:45 pm on July 6, 2012, at Foster Avenue and Nostrand Avenue, in the 67<sup>th</sup> Precinct. The report states that § 87(2)(b) was observed for one minute prior to the stop, and that the stop lasted two minutes. The suspected crime is robbery. The circumstances that led to the stop are listed as furtive movements and actions indicative of acting as a lookout.

The report further states that the reason for the stop was explained, and that no other people were stopped or questioned in relation to § 87(2)(b)'s stop. The report states that § 87(2)(b) was frisked, and lists reasons for the frisk as furtive movements. § 87(2)(b) was not searched. The report states that he was agitated at the time of the stop. It also lists additional factors leading to the stop as proximity to the crime location and that the area has a high incidence of the reported offense (encl. C 3-4).

#### **CCRB Statement:**

On October 25, 2012, PO Sears participated in a mediation eligible informational interview (encl. C 6-7). On February 6, 2013, PO Sears was interviewed at the CCRB (encl. C 8-10).

On July 6, 2012, at approximately 9:45 pm, PO Sears was driving past a park on the corner of Nostrand Avenue and Foster Avenue, in Brooklyn, with PO Diluca. They were in the only Impact Van that was on duty that day.

PO Sears observed five or six men inside the park, one of whom was § 87(2)(b). He made this observation from the street, and the men in the park were standing in a paved clearing about 50 feet inside the park. This park is dimly lit at night, as there are only the street lamps on the street, and one street lamp inside the park by a playground. Because of the lack of lighting, PO Sears could not make out the races of the men he saw in the park.

The park closes at dusk, and so PO Sears decided to enter the park to ask these men to leave. Simultaneously, PO Sears suspected that they might have been casing the park for robbery victims. He stated that his reasons for believing this were that they were in the park when they were not supposed to be and that there is a high incidence of robbery in that area. He had been briefed during roll call about

robberies in the area, and told that the high incidence of robberies in the area was the reason that the impact zone was created. Although there was no one else in the park at this time, there were many civilians on the surrounding sidewalks.

He and PO Diluca drove the van into the park, without the lights and sirens on, and drove up to them. PO Sears and PO Diluca then got out of the van, and approached the men. PO Sears told them all that they had to leave, and all but § 87(2)(b) complied. PO Sears then told § 87(2)(b) again that he had to leave the park, and he refused, saying, “Why do I have to leave?” and did not move. PO Sears stated that he did not notice § 87(2)(b) make any suspicious movements that suggested to him that § 87(2)(b) might have been armed, and nothing suspicious stood out to him about his clothing or appearance. PO Sears could not recall what § 87(2)(b) was wearing.

PO Sears then asked § 87(2)(b) for his identification and § 87(2)(b) provided it to him. PO Sears stated that he asked for the identification so that he could fill out a Stop, Question, and Frisk report for robbery. After taking down § 87(2)(b)'s information PO Sears frisked § 87(2)(b) around the waistband of his pants, and then over his pockets. PO Sears stated that he did not suspect that § 87(2)(b) was armed, but because he suspected him of robbery he had to be frisked. PO Sears explained that it is standard procedure for robbery suspects to be frisked. When PO Sears frisked § 87(2)(b) he was agitated, and cursed and yelled at him. PO Sears did not recall specifically what he said.

PO Sears did not find anything during the frisk, and then escorted § 87(2)(b) out of the park. He decided not issue him a summons on his own discretion, and escorted him out of the park by just telling him to come with him and walking with him. From start to finish, his interaction with § 87(2)(b) lasted around three minutes. At no point did he or PO Diluca ever call § 87(2)(b) an idiot, nor did he ever notice § 87(2)(b) on his phone. No other officers were present during the incident.

PO Sears was shown the Stop, Question, and Frisk report he prepared for the incident and asked to explain why he marked “Furtive Movements” as one of the circumstances leading up to the stop. He then stated that § 87(2)(b) and the other men he was with were looking around nervously, whispering to each other, and putting their hands in their pockets. PO Sears stated that he felt this might imply that some of them were trying to hide weapons. When asked why he marked “Proximity to Crime Location” on the back of the Stop, Question, and Frisk report, PO Sears stated that it meant it was in a high crime area. He stated that the report is accurate in listing that he observed § 87(2)(b) for one minute before the stop.

**Subject Officer: PO ANTHONY DILUCA**

- *PO Diluca is a white male, 5’7”, 250 lbs, with black hair and blue eyes. At the time of the incident, he was § 87(2)(b) old.*
- *On July 6, 2012, PO Diluca worked from 2:50pm to 11:35pm. He was assigned to operation impact in the 67<sup>th</sup> Precinct, which entails patrolling the Impact zone. At that time, the impact zone was the area bound by Church Street in the North, Foster Avenue in the South, Nostrand Avenue in the East, and New York Avenue in the West. He was working with PO Sears, and was assigned to the IRT van, which is a marked twelve seater police van.*

**Memo Book:**

PO Diluca had no entries in his memo book regarding this incident. The closest entry he had was before the incident for a summons he issued at 6:30pm, and the closest after is for the end of his tour, at 11:25pm (encl. C 11-13).

**CCRB Statement:**

On March 6, 2013, PO Diluca was interviewed at the CCRB (encl. C 14-16). § 87(2)(g)

On July 6, 2012, at approximately 9:45 p.m., PO Diluca was with PO Sears in a park at the intersection of Foster Avenue and Nostrand Avenue, in Brooklyn. They were driving in a marked police van. PO Diluca could not recall how many people were in the park, but stated that there are usually a lot. They did not exit the vehicle inside the park.

After approximately five minutes in the park, they drove out of it. They were driving up a driveway that led out to Nostrand Avenue, which is also used for pedestrian traffic. While they were exiting the park, a man with a bicycle, § 87(2)(b) walked out in front of their van, observed them, and stopped there. PO Diluca did not see where he was coming from. § 87(2)(b) was walking on the sidewalk on Nostrand Avenue, and had stopped on the sidewalk, in the middle of the exit. § 87(2)(b) just stayed there. He was alone, although he did briefly talk with several people passing on the street. PO Diluca stated that there was nothing about § 87(2)(b)'s behavior that he felt indicated criminality. PO Diluca could not recall anything about his appearance from that day. PO Diluca could not recall if PO Sears ever stated to him that he had observed anything suspicious about § 87(2)(b) or if he suspected him of any criminal activity.

PO Diluca waited for roughly one minute, while § 87(2)(b) stayed standing and ignored them. After that time, PO Diluca briefly turned on the siren, for less than one second, to alert § 87(2)(b) that he had to move. After doing this, § 87(2)(b) became very angry and cursed at them. PO Diluca could not recall what exactly he said. Both PO Diluca and PO Sears exited the vehicle at the same time, and approached § 87(2)(b). PO Diluca could not recall what the conversation was between them, but stated that PO Sears was the one that was speaking with him. PO Diluca stated that § 87(2)(b) still seemed angry at this point, but could not recall what he was saying. PO Diluca stated that a crowd gathered around them during this interaction, but neither he nor PO Sears interacted with them. He could not recall if § 87(2)(b) interacted with any of them. PO Diluca stated he could not recall if any other officers arrived at the scene. This whole interaction took place, in front of the van, on the sidewalk.

PO Diluca stated that he could not recall if either of them ever asked for § 87(2)(b)'s identification. However, he stated that he believes a Stop, Question, and Frisk report would have been prepared because they had him stopped. PO Diluca could not recall how long the conversation lasted or what was said, but stated that it ended by PO Sears and himself getting back into his car and leaving. PO Diluca did not recall ever making physical contact with § 87(2)(b) and could not recall if PO Sears ever did. PO Diluca could not recall if PO Sears ever frisked § 87(2)(b).

PO Diluca was shown the Stop, Question, and Frisk report prepared by PO Sears for the incident during the interview. He was shown that the report indicated that § 87(2)(b) made furtive movements, and he stated that he could not recall any, and that PO Sears did not discuss seeing any with him beforehand. He was shown that the report indicated § 87(2)(b) was performing actions that suggested he was a lookout, and he stated he could not say why that had been noted on the report. He suggested that § 87(2)(b) could have been standing in front of their van because he was being a lookout. He was shown that the report noted that § 87(2)(b) was frisked, and he stated he still could not recall if he was frisked. He was shown that the report indicated that a factor in the stop was "Proximity to crime location," and stated that this probably meant that he was inside the impact zone, which was created to address gun related crimes robberies in the area.

**Witness Officer: PO RALPH GIORDANO**

- *PO Ralph Giordano is a white male, 5'7" tall, 200 lbs, with red hair and hazel eyes. At the time of the incident, he was § 87(2)(b) old.*

**Witness Officer: PO TIMOTHY REILLY**

- *PO Timothy Reilly is a white male, 6'1" tall, 240 lbs, with brown hair and blue eyes. At the time of the incident, he was § 87(2)(b) old.*

**Witness Officer: PO JOSEPH SANTANGELO**

- *PO Joseph Santangelo is a white male, 6'0" tall, 180 lbs, with brown hair and brown eyes. At the time of the incident, he was § 87(2)(b) old.*

PO Giordano was interviewed at the CCRB on June 6, 2013, (encl. C 20-21). PO Reilly was interviewed at the CCRB on June 14, 2013, (encl. C 24-25). PO Santangelo was interviewed at the CCRB on June 21, 2013, (encl. C 28-29).

On July 6, 2012, PO Giordano was assigned to the Impact van, however his assignment was changed at 8:00 p.m. to a foot post, the location of which he could not recall. PO Reilly was assigned to a foot post for his entire tour on the day of the incident. He also could not recall the foot post's location. PO Santangelo was assigned to a foot post he recalled as being on Church Avenue between East 51<sup>st</sup> and East 52<sup>nd</sup> Street, in Brooklyn, for his entire tour that day. Neither PO Giordano, PO Reilly, nor PO Santangelo were present for this incident, and none of them had any knowledge of it.

**Officers Not Interviewed**

All of the officers assigned to the Impact van were interviewed. Given the numerous white male officers patrolling the 67<sup>th</sup> Precinct at the time of the incident, no other officers were interviewed.

**NYPD Document(s)**

**Roll Call:**

The roll call for the 67<sup>th</sup> Precinct from July 6, 2012 confirms that PO Sears and PO Diluca were patrolling the impact zone on the date of the incident (encl. D 2-10).

**MISD Check**

A search conducted for all warrant checks run on § 87(2)(b) revealed that no warrant checks were run for § 87(2)(b) on July 6, 2012. It revealed that one Bench Warrant check was run for § 87(2)(b) on July 7, 2012, by Captain Francis Giordano, of Patrol Borough Brooklyn South. (encl. D 14-17)

**Other Evidence**

Data from the US Naval Observatory Astronomical Applications Department shows that the sun set on July 6, 2012, at 8:29 p.m., and the end of civil twilight was at 9:02 p.m. (encl. E 8)

**Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of April 15, 2013 with regard to the incident.

### **Civilian(s) Criminal History**

- § 87(2)(b) [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]

### **Civilian(s) CCRB History**

- § 87(2)(b) [REDACTED]
  - [REDACTED]  
[REDACTED]
  - [REDACTED]

### **Subject Officer(s) CCRB History**

- PO John Sears has been a member of the service for two years and there are two substantiated CCRB allegations against him. (encl. A 4).
  - In Case # 201114779 PO Sears was found to have gestured discourteously and used offensive language. The Board recommended charges and the NYPD took no disciplinary action with regards to the case.
- PO Anthony Diluca has been a member of the service for three years and there are no substantiated CCRB allegations against him. (encl. A 5).

### **Conclusion**

#### **Identification of Subject Officer**

PO Sears and PO Diluca stated that they interacted with § 87(2)(b) [REDACTED]

#### **Allegations not pled:**

As the testimony that § 87(2)(b) [REDACTED] provided only describes being questioned for his identification, neither the stop nor the frisk described by PO Sears are being pled. Furthermore, PO Diluca could not recall if a frisk took place, and his testimony of the incident does not describe a stop taking place.

### **Investigative Findings and Recommendations**

#### **Allegation A – Abuse of Authority: PO John Sears questioned § 87(2)(b) [REDACTED]**

§ 87(2)(b) [REDACTED] stated that, while standing on the sidewalk outside the park, PO Sears, PO Diluca, and an unidentified officer approached him. PO Sears asked § 87(2)(b) [REDACTED] if he had seen them, and then told him to give him identification, which he did. PO Sears then took it into the van for a while, came out and returned it, then the officers left. § 87(2)(b) [REDACTED] did not allege that he was frisked.

PO Sears stated that § 87(2)(b) [REDACTED] was inside the park after dusk. He also stated that he suspected § 87(2)(b) [REDACTED] of casing the park for people to rob, and that he was frisked, both of which are documented in the Stop, Question, and Frisk report that he filled out. PO Diluca stated that § 87(2)(b) [REDACTED] was not in the park, but could not recall any other pertinent details about obtaining his identification or whether a Stop, Question, and Frisk report was prepared. He did recall that § 87(2)(b) [REDACTED] had been blocking their van, and started cursing at them when PO Diluca honked at him to move.



§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

---

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Supervisor: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      \_\_\_\_\_